

In the United States Court of Federal Claims

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BIOFUNCTION, LLC, *

Plaintiff, *

v. *

UNITED STATES OF AMERICA, *

Defendant. *

* * * * *

ORDER

As discussed during the teleconference yesterday, we seek clarification of the following issues:

- 1) Does the written contract dated February 8, 2005 vary from plaintiff's alleged responsibilities in accordance with the October 4, 2004 contract? Does the parol evidence rule apply?
- 2) Does the plaintiff allege that the extra work completed resulted from discussions with an authorized person at the USPS, prior to signing the new contract on February 8, 2005? If so, please name the authorized person.
- 3) Is this a Contract Disputes Act case? If so, can plaintiff prove an implied in fact contract despite the existence of an express contract? Discuss the differences or similarities between the work required by each alleged contract.
- 4) What is the status of Counts I-III? If this is a termination for convenience, can the Government be held liable for the breaches alleged in Counts I-III? Do counts I-III apply solely to the February 8, 2005 contract?

The parties will respond by October 25. If counsel have questions about the court's request for clarification, we ask that they contact us at 202/357-6572.

s/Robert H. Hodges, Jr.
Robert H. Hodges, Jr.
Judge